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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/319,741	06/11/1999	TAKESHI BANDO	DAIN:513	3515

7590 04/15/2003

PARKHURST & WENDEL
1421 PRINCE STREET
SUITE 210
ALEXANDRIA, VA 223142805

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/15/2003

27

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/319,741

Applicant(s)

BANDO ET AL.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4, 6, 8, 9, 11-13, 15-32 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al. (U.S. 5,699,912) in view of JP 54-106940 and JP 08080980. Ishikawa et al. disclose the claimed invention except for the open lower end being wider than the upper wall and except for the horizontal strip being on a plane below the upper wall. JP 54-106940 teaches that it is known to provide a container with an open lower end being wider than the upper wall (see figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Ishikawa et al. with the open lower end being wider than the upper wall, in order to store wider contents within the container.

JP 08080980 teaches that is known to provide a container with a horizontal strip on a plane below the upper wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Ishikawa et al. with the horizontal strip of Ishikawa et al. being on a plane below the upper wall, as taught by JP 08080980, in order to protect the horizontal strip from damage which would effect the efficacy of the locking mechanism.

Ishikawa et al. teach a container, shown in figures 1 and 11A-11C. The container body 21 has an upper wall at 33, a recessed portion at 27 and a side wall 34. The bottom wall is element 10 and the hinged lid is element 23. The hinged lid 23 is pivotally attached to the container body at 51 by elastic biasing means 50. The hinged lid is urged to the open position, as stated in lines 11-17 of the Abstract.

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The locking means is element 32, shown in figure 11B. The lid operating device, also shown in figure 11B, has a latching part 57.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al. (U.S. 5,699,912) in view of JP 54-106940 and JP 08080980, as applied to claim 36 above, and further in view of Ostrowsky et al. (U.S. 4,887,747). The modified invention of Ishikawa et al. (U.S. 5,699,912) discloses the claimed invention except for the hinge structure having a pivot shaft. Ishikawa et al. do teach a hinge structure comprising a shaft seated in holes (figure 5), however, the shaft is on the container body and the holes are on the hinged lid. Ostrowsky et al. teach that it is known to provide a hinged lid with a pivot shaft which is fitted in a holes of the container body (see elements 50 and 60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Ishikawa et al. with the hinged lid having the pivot shaft and the container body having the holes, as taught by Ostrowsky et al., since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al. (U.S. 5,699,912) in view of JP 54-106940 and JP 08080980, as applied to claim 6 above, and further in view of Mejias (U.S. 5,887,744). The modified invention of Ishikawa et al. disclose the claimed invention except for the packing. Mejias teaches that it is known to provide a packing between inner and outer ribs (see element 16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Ishikawa et al. with the packing of Mejias, in order to better seal the container.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al. (U.S. 5,699,912) in view of JP 54-106940 and JP 08080980, as applied to claim 36 above, and further in view of Holzkopf (U.S. 4,741,452). The modified invention of Ishikawa et al. discloses the claimed

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invention except for the pair of catching ribs and inclined rib of the bottom wall. Holzkopf teaches that it is known to provide a bottom wall with a pair of catching ribs and an inclined rib (see elements 12, 15 and 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Ishikawa et al. with the bottom wall and container body having engagement means comprising a joining rib, a pair of catching ribs and an inclined rib, as taught by Holzkopf, in order to provide a more secure engagement between the container body and bottom wall.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al. (U.S. 5,699,912) in view of JP 54-106940 and JP 08080980, as applied to claim 36 above, and further in view of Behrend (U.S. 5,353,946) and Goujon (U.S. 5,145,088). The modified invention of Ishikawa et al. discloses the claimed invention except for the lid being injection molded and except for the label. Behrend teaches that it is known to provide a lid which is injection molded. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Ishikawa et al. with the lid being injection molded, as taught by Behrend, in order to form the lid using a well known and widely used process.

Goujon teaches that it is known to provide a lid with a label. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Ishikawa et al. with a label, as taught by Goujon, in order to advertise the contents of the container.

7. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al. (U.S. 5,699,912) in view of JP 54-106940 and JP 08080980, as applied to claim 36 above, and further in view of Behrend (U.S. 5,353,946) and Goujon (U.S. 5,145,088). The modified invention of Ishikawa et al. discloses the claimed invention except for the bottom wall being injection molded and except for the label. Behrend teaches that it is known to provide a container element which is injection molded. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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provide the modified container of Ishikawa et al. with the bottom wall being injection molded, as taught by Behrend, in order to form the container using a well known and widely used process.

Goujon teaches that it is known to provide a lid with a label. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Ishikawa et al. with a label, as taught by Goujon, in order to advertise the contents of the container.

Response to Arguments

8. Applicant's arguments filed January 8, 2003 have been fully considered but they are not persuasive. Regarding the limitation that the container side wall is integral with the upper wall, the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding (in re Hotte (C.C.P.A.) 157 U.S.P.Q. 326); the term is not necessarily restricted to a one-piece article (in re Kohno (C.C.P.A.) 157 U.S.P.Q. 275); and may be construed as relatively broad (in re Dike (C.C.P.A.) 157 U.S.P.Q. 581).

9. The device of Ishikawa et al. is modified by JP 54-106940 to teach an open lower end being wider than the upper wall, in order to store wider contents within the container. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

10. The device of Ishikawa et al. teaches a recessed portion provided on a round inclined wall extending from the upper wall to the side wall. This round inclined wall is between elements 33 and 34 and specifically shown, above lead line 34 and directly adjacent to lead line 33 in figure 3B.

11. The device of Ishikawa et al. teaches a horizontal strip at lead line 52B in figure 11B. The horizontal strip is depressed, as shown in figure 11B to release the locking means of the lid. The

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horizontal strip of Ishikawa is located within the outside shape of the container body and is modified by JP08080980 to be located on a plane below the upper wall.

12. The modified device of Ishikawa et al. would (1) be able to be placed in a stable manner on a surface, (2) enable the hinged lid to be easily released in a one-touch manner with the use of a single hand, and (3) allow the user to easily put contents into and take contents out of the container body through the open lower end. Since the modified Ishikawa device has a recessed portion similar to that of the present application, the recessed portion can be easily and compactly formed. Since the modified Ishikawa device includes a horizontal strip within the outside shape of the container, the horizontal strip would be easily depressed without effecting the stability of the container.

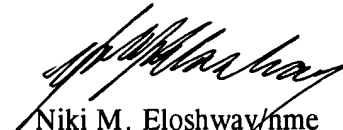
Conclusion

13. THIS ACTION IS MADE NON-FINAL.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshway/nme
Patent Examiner
April 4, 2003